made in reference to and by virtue of the appellant's employment. It is also said that the words "in respect of having or exercising the employment" in section 13(1)(a) of the Income Tax Act, 1967 require the payment to be of a contractual nature, a payment to which the taxpayer is legally entitled. But I can find no justification for placing any such construction on these words. It is next pointed out that these words do not have the same meaning as the words "in respect of employment" in section 10(2)(a) of the Income Tax Ordinance, 1947. To my mind there is no difference between a "gratuity in respect of employment" and a "gratuity in respect of having or exercising the employment". The latter phrase, if anything, has a much wider meaning.

It is conceded that there are numerous authorities for the proposition that a voluntary payment to the holder of an office made by virtue of his office or employment is taxable notwithstanding that there may not be any legal obligation to make the payment, but it is argued on the authority of *Duncan's Executors* v. *Farmer*[6] that a payment made when the recipient is no longer in office or employment is not a profit of office or employment. I do not see the cogency of that argument in relation to an *ex gratia* payment made on the termination of a person's employment, as it would be a payment in respect of having or exercising the employment, especially when the payment is related to the total period of his employment.

In the leading case of *Hochstrasser* v. *Mayes*,[7] Viscount Simonds said:

"Upjohn J., before whom the matter first came, after a review of the relevant case law, expressed himself thus in a passage which appears to me to sum up the law in a manner which cannot be improved upon. 'In my judgment,' he said, 'the authorities show this, that it is a question to be answered in the light of the particular facts of every case whether or not a particular payment is or is not a profit arising from the employment. Disregarding entirely contracts for full consideration in money or money's worth and personal presents, in my judgment not every payment made to an employee is necessarily made to him as a profit arising from his employment. Indeed, in my judgment, the authorities show that to be a profit arising from the employment the payment must be made in reference to the services the employee renders by virtue of his office, and it must be something in the nature of a reward for services past, present or future.' In this passage the single word 'past' may be open to question, but apart from that it appears to me to be entirely accurate."

It would seem clear that in the present case the payment to the appellant was made in reference to his services and that it was something in the nature of a reward for his services.

It is common ground that what has to be ascertained is the true character of the payment of $32,000 in the light of the facts leading up to such payment. In the words of Viscount Simon in *Commissioners of Inland Revenue* v. *Wesleyan and General Assurance Society*,[8] the question always is what is the real character of the payment, not what the parties call it. I need hardly add that although the employers chose to call their scheme under which the appellant was paid the sum of $32,000 a scheme of compensation, it was in reality a scheme for the payment of a gratuity to its staff on the basis of age and years of service. What the appellant had was an *ex gratia* payment of $32,000 for the services rendered. It was in no way related to the period for which he could have gone on working had he been kept in employment until the retiring age of 55. It is therefore liable to tax as gratuity in respect of having or exercising the employment, under section 13(1)(a) of the Income Tax Act, 1967. That being so, the appeal fails and must be dismissed with costs.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.*

R.T. LTD. v. DIRECTOR-GENERAL OF INLAND REVENUE

[A.C.J. (Gill F.J.) August 19, 1972]

[Penang — Originating Motion No. 2 of 1972]

Income Tax — Assessment — Sale of business by taxpayer to wholly owned subsidiary company under a 'reconstruction agreement' — Basis for computing statutory income — 'Acquisition' of source — Applicability of provisions consequent upon acquisition of source — Income Tax Ordinance, 1947, s. 31(1) and (5) — Income Tax Act, 1967, as amended by Income Tax (Transitional Provisions) Order, 1968, Sch. 9, para. 104(a) and 105(a).

This was a case stated by the Special Commissioners of Income Tax arising out of an appeal to them against the assessment of income tax by the respondent on the appellants' income for the years 1966 and 1967.

By an agreement dated November 11, 1966 the appellants' company, incorporated in Hong Kong with its registered office there, agreed to sell to the R.T. Plantations Sdn. Bhd., incorporated in Malaysia as a wholly owned subsidiary company of the appellants, the whole of the appellants' business as a going concern on the terms and conditions as set out in a "reconstruction agreement". The appellants owned five rubber estates and the income from these estates constituted the business income which the appellant had in Malaysia and which the Income Tax Department had been treating as one source. Clause I of the agreement was to the effect that "relevant completion date" of the sale of each of the five estates was to extend over a period from October 1st, 1966 to September 30th 1967.

The question for determination by the Special Commissioners was whether the provisions of paragraph 104(a) of Schedule 9 to the Income Tax Act, 1967 as amended by the Income Tax (Transitional Provisions) Order 1968, applied to the appellants. The special commissioners concluded that there was an "acquisition" within the meaning of paragraph 105(a) of Schedule 9; that there was acquisition of five sources as at the different completion dates of sale of the five rubber estates; and that the provisions of paragraph 104(a) of Schedule 9 applied to the three rubber estates acquired after 15th June, 1967, but not to the two rubber estates acquired prior to 15th June, 1967.

The special commissioners accordingly made an order directing that the notices of assessments in respect of the appellants' income for the years of assessments 1966 and 1967 be amended in that the income tax in respect of the two estates sold before June 15th, 1967 be assessed under section 31(5) and in respect of the three estates sold after June 15, 1967, under section 31(1) of the West Malaysian Ordinance (Income Tax Ordinance 1947).

The appellants' appealed from this order.

Held, dismissing the appeal: (1) there was evidence to support the decision of the special commissioners;

(2) an agreement to sell and the completion of the sale are two different things. The acquisition of the source can only date from the date of completion of the sale.

INCOME TAX CASE STATED.

S. Woodhull for the appellants.

Rahmat bin Jamari (Senior Federal Counsel) for the respondent.

Gill F.J.: This is a case stated by the Special Commissioners of Income Tax arising out of an appeal to them against the assessment of income tax by the respondent on the appellants' income for the years 1966 and 1967.

No evidence was adduced at the hearing before the special commissioners, as an agreed statement of facts was submitted to them, together with an agreement dated November 11, 1966 entitled "Reconstruction Agreement" entered into between the appellants and the R.T. Plantations Sdn. Berhad. A statement dated September 21, 1971 signed by the Chief Accountant of Plantations Agencies Sdn. Berhad was also submitted to them as an agreed document.

Briefly stated, the facts of the case are that by an agreement dated November 11, 1966 the appellant company, which was incorporated in Hongkong with its registered office there, agreed to sell to the R.T. Plantations Sdn. Berhad, which was incorporated in the States of Malaysia on December 9, 1965 and is a wholly owned subsidiary company of the appellants, the whole of the appellants' business as a going concern on the terms and conditions as set out in the said agreement. The appellants were the owners of five rubber estates known as B. S. Estate, C. Estate, S. Estate, T. Estate and R. Estate. The income from the said rubber estates constituted the business income which the appellants had in Malaysia and which the Income Tax Department had been treating as one source.

Paragraph (f) of the recitals to the agreement reads:—

"It has been agreed between the vendor and the subsidiary that for the purposes of this agreement the said business shall be divided into five parts represented by the five estates hereinbefore referred to, and that with a view to the subsidiary acquiring from the vendor the whole of the said business with effect from the commencement of business on the dates as hereinafter provided the vendor shall cease to carry on that portion of the said business represented by each of the said estates for its own account and that completion date for the sale of that part of the said business represented by each of the said five parts shall be the said dates as hereinafter provided."

Clause 1 of the agreement was to the effect that "the relevant completion date" of the sale of each of the five estates shall be as follows:—

Bukit Sembilan Estate	1st October, 1966
Cheng Estate	1st May, 1967
Senawang Estate	1st July, 1967
Tebong Estate	1st September, 1967
Repah Estate	30th September, 1967.

Clause 3 of the agreement states:

"Subject as hereinafter provided the said sale and purchase shall in the case of Bukit Sembilan Estate be deemed to have been made and carried into effect and in all other cases shall be made and carried into effect in the case of each of the said parts of the said business as at the relevant completion date and possession of the property agreed to be sold hereunder shall be given by the vendor to the subsidiary as soon as possible thereafter in each case and the vendor shall at each relevant completion date be deemed to have ceased or shall cease to carry on the relevant part of the said business which shall thenceforth have been or be carried on by the subsidiary, to the intent that the subsidiary shall commence business of owning and managing rubber estates on the 1st October, 1966, and the vendor shall finally cease to carry on the said business on the 30th September, 1967."

Clause 6 of the agreement provided that "so soon as possible after the relevant completion date in each case the vendor shall execute and do and procure all other necessary parties (if any) to execute and do all such further deeds, assurances, acts and things for vesting the property hereby agreed to be sold and the said premises in the subsidiary and giving to it the full benefit of this agreement".

The question for determination by the special commissioners was whether the provisions of paragraph 104(a) of Schedule 9 to the Income Tax Act, 1967, as amended by the Income Tax (Transitional Provisions) Order, 1968, applied to the appellants. The said paragraph as amended reads as follows: —

"Where the circumstances are such that a person has an amount of statutory income from a source (in this paragraph referred to as the old source) of a kind to which section 31(5) or (7) of the West Malaysian Ordinance has applied (or, but for this paragraph, would have applied) for both the year of assessment 1967 and the preceding year of assessment under the West Malaysian Ordinance, then, if —

(a) there is an acquisition of the old source on or after 15th June, 1967; or

x x x

section 31(1) or (2), as the case may be, of the West Malaysian Ordinance shall apply to him in relation to the old source for both those years, and all such assessments or additional assessments or repayments of old tax under that Ordinance (or, if section 31(5) or (7) has been applied to him in relation to the old source, all such assessments or additional assessments or repayments of old tax under that Ordinance) shall be made as may be necessary in consequence of this subparagraph."

The contentions before the special commissioners on behalf of the appellants were that —

(a) there has been no acquisition within the meaning of paragraph 105 of the said Schedule 9 and that paragraph 104(a) is not applicable to the appellants;

(b) the reconstruction agreement dated 11th November, 1966 refers to the business as a single entity although for the purpose of sale it was divided into five parts represented by five estates;

(c) the sale was a single transaction which to all intents and purposes was effected on 1st October, 1966, when the first estate was sold;

(d) the acquisition of the whole business dates from 1st October, 1966, which is prior to 15th June, 1967, the date prescribed in paragraph 104(a) of Schedule 9. Paragraph 104(a), therefore, does not apply to the appellants;

(e) the Income Tax Department having always treated the appellants' business in respect of their rubber estates as a single business, it was not now open to the department to contend otherwise; and

(f) the income tax in respect of all the five estates should be assessed under the cessation provisions of section 31(5) and not under section 31(1) of the Income Tax Ordinance, 1947.

On behalf of the Director-General of Income Tax it was contended that —

(a) the business sold under the agreement of 11th November, 1966 constituted the sale of the whole business in a single transaction;

(b) the last completion date being 30th September, 1967, the business was not acquired until that date;

(c) the date of the acquisition being 30th September, 1967, the provisions of paragraph 104(a) would apply to the appellants; and

(d) the income tax should be assessed under section 31(1) of the Income Tax Ordinance, 1947 in respect of all the five estates of the appellants.

The alternative contentions on behalf of the Director-General were that —

(a) the five estates constituted five sources which were acquired at five different dates;

(b) the three estates acquired after 15th June, 1967 would attract the provisions of paragraph 104(a) of Schedule 9, but not the two estates which were acquired before 15th June, 1967; and

(c) income tax in respect of the three estates sold after 15th June, 1967, should be assessed under section 31(1) and in respect of the two estates sold before 15th June, 1967 under section 31(5) of the Income Tax Ordinance, 1947.

In the event the special commissioners reached the following conclusions:—

(a) there was "acquisition" within the meaning of paragraph 105(a) of Schedule 9;

(b) there was acquisition of five sources as at the different completion dates of sale of the five rubber estates;

(c) the provisions of paragraph 104(a) of Schedule 9 applied to the three rubber estates acquired after 15th June, 1967, but not to the two rubber estates acquired prior to 15th June, 1967.

They accordingly made an order directing that the notices of assessments in respect of the appellants' income for the years of assessment 1966 and 1967 be amended in that the income tax in respect of the two Estates sold before 15th June, 1967 be assessed under section 31(5) and in respect of the three estates sold after 15th June, 1967 under section 31(1) of the West Malaysian Ordinance (Income Tax Ordinance, 1947). From this order the appellants have appealed.

The first argument by counsel for the appellants in support of this appeal is that the division of the appellants' activities into five separate businesses by the special commissioners was entirely contrary not only to the agreed statement of facts but also to the first and primary submission of the Revenue that on a proper construction of the agreement all the five estates were to be treated as one single source of income. It is said that, if the facts had not been agreed to, the appellants would have called evidence to show that the business was treated as one for administrative purposes and that its treatment as such for such purposes was in fact correct. It is next said that the Revenue, having admitted for the purposes of the agreed facts and in argument that immediately prior to the date of the agreement of November 11, 1966 the appellants had only one business, it was not open to the Revenue to argue before the special commissioners, nor was it open to the special commissioners to find, in direct contradiction of the agreed facts, that what was acquired "was and always had been five separate businesses".

With all deference to the learned counsel for the appellants, the futility of this argument is obvious. What evidence could the appellants have called to contravene the terms and conditions of the agreement to sell which are crystal clear and are borne out by the following statement signed by the Chief Accountant of the Plantation Agencies Sdn. Berhad:—

"We hereby confirm that the books of account maintained by The R. T. Limited and R. T. Plantations Sendirian Berhad show that for the purposes of the trading and profit and loss accounts of these two companies the undermentioned properties were transferred from The R. T. Limited to R. T. Sendirian Berhad on the dates set out below.

Bukit Sembilan Estate	1st October 1966
Cheng Estate	1st May 1967
Senawang Estate	1st July 1967
Tebong Estate	1st September 1967
Repah Estate	30th September 1967"?

It is true that the appellants had only one business, but it is equally true that for the purposes of the sale agreement, as is abundantly clear from the recitals, the said business was to be "divided into five parts represented by the five estates", so that each estate forming part of that business was to be treated as providing a separate source of income to the appellants. It was only in the case of B. S. Estate that the sale and purchase was deemed to have been made and carried into effect on the date of the agreement. In the case of the other four estates the sale and purchase was to be made and carried into effect as at the relevant completion date stipulated for each Estate. This is stated in unequivocal terms in clause 3 of the agreement. If the agreement provided different dates for the sale of each of the estates, then the income from each of the sources ceased on the respective dates of such sales. This is something which could not have been contradicted by any evidence which the appellants might have chosen to bring. The truth would appear to be that the argument put forward completely overlooks the difference between a contract to sell and the sale itself. I need hardly add that it was only on the dates of completion of the sale of each of the estates that the property in the estates passed to or was acquired by the subsidiary company.

It is conceded that the relationship between the appellant company and its subsidiary company was such as to bring into operation the definition of the term "acquisition" contained in paragraph 105(a) of Schedule 9, but a point is made that the special commissioners failed to appreciate the fact that the definition is in relation to the acquisition of a source by a company in the same group. It is submitted that the fact that there is no dispute as to the final date of cessation of the appellants' businesses is irrelevant, as it is the date of "acquisition" of the source by the acquiring company which is relevant for the purposes of the definition. This submission takes us back to the argument that there was but one source and that

its acquisition by the acquiring company was on the date of the agreement. I can find no merit whatsoever in this submission. I would reiterate that an agreement to sell and the completion of the sale are two different things. The acquisition of the source can only date from the date of the sale itself.

The alternative finding of the special commissioners, that if there was only one acquisition it did not take place until the last completion date, is criticised on the ground that if they were right it would be impossible to account for the income of the subsidiary company from the date of the first completion to the final completion date. As the deciding order of the special commissioners was not based on this alternative findings, I do not consider it necessary to answer what, to my mind, is a purely hypothetical question.

It is also argued that there is nothing inconsistent in having a cessation date for the appellant company which differs from the commencement date of the subsidiary. It is said that cessation and commencement are not necessarily related and that the one can occur without the other. This again is a question which does not call for an answer. I need only add that in the present case, in view of the terms and conditions of the agreement to sell, cessation and commencement must necessarily be taken to be related to each other.

The final argument is that whatever the position may have been as a matter of law *vis-a-vis* the appellants, if there was only one business which was the source of income, that source must have been acquired as such for the first and only time by the acquiring company on the date of the first completion date, namely, October 1, 1966. A short answer to that argument is that the business having been sold piecemeal on different dates, those were the dates of acquisition of each piece insofar as the acquiring company was concerned. It was on that basis that the special commissioners made their deciding order. In my judgment they were quite right in doing so.

For the reasons which I have stated I would answer in the affirmative the question of law which has been referred for the opinion of this court, namely, whether on the facts there is evidence to support the decision of the special commissioners. That being so, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.*

OLIVER YOUNG v. COLLECTOR OF LAND REVENUE, BATU PAHAT

[O.C.J. (Syed Othman J.) August 26, 1971]

[Muar — Land Reference No. 4 of 1968]

Land Laws — Compulsory acquisition — Objection against collector's award — Reference to court — Preliminary point of whether collector holding inquiry must also make the award — Land Acquisition Act, 1960, s. 12(1).

This was an objection against the award of compensation by the respondent.

Before the hearing commenced, a preliminary point was raised by counsel for the respondent, which was also supported by applicant's counsel, as to whether it was proper for one collector to hold the enquiry in the acquisition proceedings, and for another to make the award.

In this case, one assistant collector had made the enquiry and another had prepared the written award which was apparently based on "grounds of judgment", containing the assessment of compensation, which the former had prepared.

Held: (1) section 12(1) of the Land Acquisition Act, 1960, requires the collector to make full enquiry into the value of ail land and to assess the amount of appropriate compensation. These two requirements go together, and the collector who makes the enquiry must assess the compensation;

(2) in the circumstances of this case, the specific requirements of section 12(1) had not been complied with. Therefore, the assessment was invalid and there should be an enquiry *de novo* by another collector.

Observations on the functions of the collector under the Act.

Case referred to:-

(1) *MacDonald* v. *Secretary of State* 123 P.R. 1908; 19 P.L.R. 1909; 4 I.C. 914.

LAND REFERENCE.

Dato' Donald Carbis Jackson for the applicant.

Hamzah bin Mohamed Salleh (Legal Adviser, Johore) for the respondent.

Cur. Adv. Vult.

Syed Othman J.: On 15th October, 1966, the State Government commenced proceedings under the Land Acquisition Act, 1960 to acquire land held under four titles in Mukim Sri Gading, District of Batu Pahat, Johore, and registered in the names of four persons, one of whom was the applicant. On 8th February, 1967, an assistant collector of land revenue in Batu Pahat held an enquiry. The applicant gave evidence showing the date he had purchased the land, the price he had paid for it, the plan he had as regards the land *i.e.* to build houses for sale, the offer he had received for the purchase of a portion of the land from an oil company. I need not concern myself with the other owners as they subsequently accepted the sums which the Government offered as compensation for the acquisition. An appraiser also appeared before the assistant collector. He submitted his report on the valuation of the four pieces of land to be acquired.

On 9th October, 1967 another assistant collector made an award on the acquisition. The applicant being dissatisfied with the amount of compensation filed an objection against it on 14th November, 1967. This objection has now been referred to this court.

Before hearing could commence, Che' Hamzah,